

**OCT 18 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CARLOS ALBERTO FLOOD-QUISPE,  
aka Oscar Martinez,

Defendant - Appellant.

No. 04-50215

D.C. No. CR-03-01189-ER

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Edward Rafeedie, District Judge, Presiding

Submitted October 11, 2005<sup>\*\*</sup>

Before: NELSON, T.G., WARDLAW, and TALLMAN, Circuit Judges.

Carlos Alberto Flood-Quispe appeals the 77-month sentence imposed following his conviction by guilty plea for illegal reentry after deportation, in violation of 8 U.S.C. § 1326. We dismiss the appeal.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Because the conditions precedent to Flood-Quispe's waiver of his right to direct appeal were met—the sentence was within the statutory maximum and was constitutional; the district court did not depart upward in offense level or criminal history category; and the district court determined that the total offense level is 21 and imposed a sentence at the low end of the applicable guideline range—we enforce the appeal waiver. Moreover, the voluntary and knowing nature of Flood-Quispe's waiver of appeal was unaffected by *United States v. Booker*, 125 S. Ct. 738 (2005). *See United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (stating that “a change in the law does not make a plea involuntary and unknowing”).

**DISMISSED.**